

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill provides for new regulation of homeowners' associations. The Department of Business and Professional Regulation states that this bill will require additional government employees.

B. EFFECT OF PROPOSED CHANGES:

This bill creates new regulatory authority for the Department of Business and Professional Regulation (department) to regulate homeowners' associations. The department estimates that there are 14,000 homeowners' associations in Florida.¹ Currently, the department's Division of Florida Land Sales, Condominiums, and Mobile Homes enforces ch. 718, F.S. (condominiums), ch. 719, F.S. (cooperatives), ch. 721, F.S. (vacation plan and timesharing), and ch. 723, F.S. (mobile homes). The Division of Florida Land Sales, Condominiums, and Mobile Homes does not regulate homeowners' associations. Section 720.302(2), F.S., provides, in part:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations.

The Division of Florida Land Sales, Condominiums, and Mobile Homes is involved in the mediation and arbitration provisions of law.²

HB 1229

Section 1 of this bill amends s. 20.165, F.S., to rename the "Division of Florida Lands Sales, Condominiums, and Mobile Homes" within the Department of Business and Professional Regulation as the "Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Homes" (division).

Sections 2 and Sections 13-56 of this bill amend various provisions of law to reflect the change in name from the "Division of Florida Lands Sales, Condominiums, and Mobile Homes" to the "Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Homes."

Sections 3 and 4

Section 468.4315, F.S., creates the Regulatory Council of Community Association Managers within the department. The council consists of seven members appointed by the Governor and confirmed by the Senate. The council establishes rules relating to the licensure of association managers and approves the licensure examination.³ This bill amends section 468.4315(1), F.S., which provides for the transfer of the council from the department to the division. The bill amends section 468.436(1), F.S., to shift the responsibility for investigating violations to the division.

¹ Department of Business and Professional Regulation, Legislative Analysis HB 1229, March 21, 2005 (on file with the Civil Justice Committee).

² Section 720.311, F.S., provides a dispute resolution mechanism for homeowners' associations. Section 720.311(1), F.S., provides an arbitration procedure for recall of association directors. Section 720.311(2), F.S., provides for mediation and arbitration of disputes between a parcel owner and an association regarding use or changes to common areas, covenant enforcement, amendments to association documents, meeting of the board, election meetings, and access to official records of the association.

³ See ss. 468.4315 – 468.435, F.S.

Section 5

This bill amends s. 718.111, F.S., to require condominium associations that provide guest parking to configure and assign the spaces pursuant to s. 553.5041, F.S. Section 553.5041, F.S., adopts various standards of the Americans with Disabilities Act as Florida law and sets forth various requirements relating to parking for people with disabilities. This bill requires that residents with disabilities shall not park in a disabled guest parking space unless their assigned parking space is in use illegally. Resident disabled parking shall be by assignment from available spaces by the association, pursuant to local fair housing law. When a resident has two vehicles, one equipped with a lift, the association shall assign a second parking space that satisfies the needs of the vehicle's lift operation, if an additional parking space is available unassigned.

Section 6

The bill requires a condominium association to maintain reserves of at least ten percent of the yearly operating budget. Section 718.112(2)(f)2., F.S., requires a reserve account for capital expenditures and deferred maintenance. Current law permits an association to, by majority vote of the members, provide no reserves or less reserves. This bill permits the association to provide no reserves or less reserves by a majority vote of the members.

Section 7

This bill amends s. 718.501, F.S., to require mandatory training for condominium association board members. The department suggests that this requirement could have a significant fiscal impact. See "Fiscal Comments."

The bill also amends s. 718.501, F.S. to require the department to notify, by certified mail, any condominium owner found to be in violation of the ch. 718.

Section 8

Section 718.5011, F.S., creates an Office of the Condominium Ombudsman with the Division of Florida Land Sales, Condominiums, and Mobile Homes. This bill requires the ombudsman to monitor and review procedures and disputes concerning homeowners associations.

Section 9

Section 719.104, F.S., requires audits of financial records of cooperative associations under certain circumstances. Section 719.104(4)(b), F.S., permits the association to waive audit requirements by a majority vote. This bill prohibits the association from waiving the audit requirements for more than two consecutive years.

Section 10

This bill amends s. 719.1055, F.S., to require that any amendment to cooperative documents purporting to restrict the right of unit owners to rent their units applies only to (1) owners who consent to the amendment; and (2) unit owners who purchase their units after the effective date of the amendment. This provision is similar to s. 718.110(13), F.S., in the condominium statute.

Section 11

This bill creates new regulatory authority for the division. It gives the division the power to enforce and ensure compliance with the provisions of ch. 720, F.S. The provisions in Section 11 of this bill are

similar to provisions in law relating to regulation of condominiums, s. 718.501, F.S., and cooperatives, s. 719.501, F.S.

Division's Investigatory and Enforcement Powers Under HB 1229

This bill requires the division to make public or private investigations within or outside this state to determine whether any person or association has violated the law, administrative rule, or order. The division may require or permit any person to file a statement in writing as to the facts and circumstances concerning the investigation. This bill gives specified division employees investigatory powers including the ability to administer oaths, to issue subpoenas, and to require the production of documents. The division may apply to the circuit court for orders to compel compliance.

This bill gives the division the authority to institute enforcement proceedings without the necessity of a homeowner or association filing a complaint. The bill provides the following remedies for violations:

- The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.
- The division may issue an order requiring the homeowners' association to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter.
- The division may bring an action in circuit court on behalf of a class of homeowners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution.

This bill gives the division the authority to impose penalties:

- The division may impose a civil penalty against an association for any violation of ch. 720 or department rules;
- The division may impose a civil penalty individually against any officer or board member who willfully and knowingly⁴ violates a provision of ch. 720, department rule, or a final order of the division. This bill requires the division, prior to initiating formal agency action under chapter 120, to give the officer or board member an opportunity to voluntarily comply. An officer or board member who complies within 10 days is not subject to a civil penalty.

A penalty may be imposed on the basis of each day of a continuing violation, but in no event shall the penalty for any offense exceed \$5,000.

This bill requires that all penalties collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Homes Trust Fund.

Rule-Making Requirements

This bill requires the division to adopt rules relating to guidelines for penalties applicable to violations of the chapter and rules. This rule-making must be completed by January 1, 2006. The guidelines must be based upon the harm caused by the violation, the repetition of the violation, and such other factors deemed relevant by the division. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules.

⁴ This bill states that "willfully and knowingly means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division."

The division must establish procedures for providing notice to an association when the division is considering the issuance of a declaratory statement with respect to the homeowners' association documents governing such communities.

Division's Duty to Provide Certain Information and Training

The bill authorizes the division to prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of communities with homeowners' associations in assessing the rights, privileges, and duties pertaining to such associations. It requires the division to furnish each association a copy of ch. 720, subsequent changes to ch. 720 on an annual basis, an amended version of ch. 720 as it becomes available from the Secretary of State's office on a biennial basis, and rules adopted by the division on an annual basis. The division must maintain a toll-free telephone number accessible to homeowners' association members.

The division must also annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of homeowners' associations which were rendered by the division during the previous year.

This bill requires the division to provide training programs for homeowners' association board members. Training shall be mandatory for newly elected board members and members currently serving on a board who have not previously voluntarily attended training. The department suggests that the training requirement will have a significant fiscal impact. See "Fiscal Comments."

Mediation and Arbitration

The bill requires the division to develop a program to certify both volunteer and paid mediators to provide mediation of homeowners' association disputes. The division shall provide, upon request, a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255. The division must include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in either county or circuit courts. The division may adopt, by rule, additional factors for the certification of paid mediators.

Time Periods for Handling Complaints

This bill provides that the division must, within 30 days after receipt of a complaint, acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division. The division must inform the complainant whether additional information is needed. The division shall conduct its investigation and shall, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation has occurred.

Right of the Association to Respond

Any homeowner's association member found to be in violation of this chapter shall be notified by the department by certified mail, return receipt requested, at which time the homeowners' association member will have 30 days in which to respond in writing.

Section 12

This bill creates s. 720.3071, which provides that the division is to require training programs for homeowners' association board members and unit owners. The training is mandatory for newly elected board members and other board members who have not attended training. The Department of Business and Professional Regulation states this provision will have a significant fiscal impact. See "Fiscal Comments."

Section 24

This bill amends s. 498.019, F.S., to allow the Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Home Trust Fund to be used for the administration and operation of part VIII of ch. 468 and ch. 720.

Sections 13-56 of this bill change various provisions of law to reflect the division's name change and the trust fund's name change.

This bill takes effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amend s. 20.165, F.S., to change the name "Division of Florida Land Sales, Condominiums, and Mobile Homes" to "Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Homes."

Section 2. Amends s. 468.431, F.S., to reflect the division's name change.

Section 3. Amends s. 468.4315, F.S., to place the Regulatory Council of Community Association Managers under the division.

Section 4. Amends s. 468.436, F.S., to shift to the division the responsibility of disciplinary proceedings relating to community association managers.

Section 5. Amends s. 718.111, F.S., relating to the assignment of guest parking by condominium associations.

Section 6. Amends s. 718.112, F.S., to require condominium associations to maintain at least ten percent of their operating budgets as reserves.

Section 7. Amends s. 708.501, F.S., to require mandatory training for condominium associations' board members and require the division to notify condominium owners of violations of ch. 718.

Section 8. Amends s. 718.5012, F.S., to give the ombudsman the power to monitor and review procedures and disputes concerning homeowners' associations.

Section 9. Amends s. 719.104, F.S., relating to audit requirements for cooperatives.

Section 10. Amends s. 719.1055, F.S., relating to the ability of cooperative associations to restrict the rental of cooperative units.

Section 11. Creates s. 720.3015, F.S., to give the division regulatory and enforcement authority over homeowners associations.

Section 12. Amends s. 720.3071, F.S., to require training for homeowners' association board members and unit owners.

Section 13. Amends s. 73.073, F.S., to reflect the division's name change.

- Section 14. Amends s. 190.009, F.S., to reflect the division's name change.
- Section 15. Amends s. 192.037, F.S., to reflect the division's name change.
- Section 16. Amends s. 213.053, F.S., to reflect the division's name change.
- Section 17. Amends s. 215.20, F.S., to change the name "Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund" to "Division of Florida Land Sales, Condominiums, Homeowners' Associations, Community Association Management, and Mobile Homes Trust Fund."
- Section 18. Amends s. 326.002, F.S., to reflect the division's name change.
- Section 19. Amends s. 326.006, F.S., to reflect the trust fund's name change.
- Section 20. Amends s. 380.0651, F.S., to reflect the division's name change.
- Section 21. Amends s. 455.116, F.S., to reflect the trust fund's name change.
- Section 22. Amends s. 475.455, F.S., to reflect the division's name change.
- Section 23. Amends s. 498.005, F.S., to reflect the division's name change.
- Section 24. Amends s. 498.019, F.S., to reflect the trust fund's name change and provide that the trust fund may be used for the administration and operation of part VIII of ch. 468, F.S., and ch. 720, F.S.
- Section 25. Amends s. 498.047, F.S., to reflect the division's name change.
- Section 26. Amends s. 498.049, F.S., to reflect the trust fund's name change.
- Section 27. Amends s. 509.512, F.S., to reflect the division's name change.
- Section 28. Amends s. 559.935, F.S., to reflect the division's name change.
- Section 29. Amends s. 718.103, F.S., to reflect the division's name change.
- Section 30. Amends s. 719.105, F.S., to reflect the name changes of the division and the trust fund.
- Section 31. Amends s. 718.1255, F.S., to reflect the division's name change.
- Section 32. Amends s. 718.5011, F.S., to reflect the name changes of the division and the trust fund.
- Section 33. Amends s. 718.502, F.S., to reflect the division's name change.
- Section 34. Amends s. 718.504, F.S., to reflect the division's name change.
- Section 35. Amends s. 718.508, F.S., to reflect the division's name change.
- Section 36. Amends s. 718.509, F.S., to reflect the trust fund's name change.
- Section 37. Amends s. 718.608, F.S., to reflect the division's name change.
- Section 38. Amends s. 719.103, F.S., to reflect the division's name change.
- Section 39. Amends s. 719.1255, F.S., to reflect the division's name change.

- Section 40. Amends s. 719.501, F.S., to reflect the name changes of the division and the trust fund.
- Section 41. Amends s. 719.502, F.S., to reflect the division's name change.
- Section 42. Amends s. 719.504, F.S., to reflect the division's name change.
- Section 43. Amends s. 719.508, F.S., to reflect the division's name change.
- Section 44. Amends s. 719.608, F.S., to reflect the division's name change.
- Section 45. Amends s. 720.301, F.S., to reflect the division's name change.
- Section 46. Amends s. 721.05, F.S., to reflect the division's name change.
- Section 47. Amends s. 721.07, F.S., to reflect the division's name change.
- Section 48. Amends s. 721.08, F.S., to reflect the trust fund's name change.
- Section 49. Amends s. 721.26, F.S., to reflect the trust fund's name change.
- Section 50. Amends s. 721.28, F.S., to reflect the trust fund's name change.
- Section 51. Amends s. 721.301, F.S., to reflect the trust fund's name change.
- Section 52. Amends s. 721.50, F.S., to reflect the division's name change.
- Section 53. Amends s. 723.003, F.S., to reflect the division's name change.
- Section 54. Amends s. 723.006, F.S., to reflect the trust fund's name change.
- Section 55. Amends s. 723.009, F.S., to reflect the trust fund's name change.
- Section 56. Amends s. 723.0611, F.S., to reflect the division's name change.
- Section 57. Provides that the bill becomes effective July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See "Fiscal Comments"
2. Expenditures:
See "Fiscal Comments"

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
This bill does not appear to have a fiscal impact on local governments.
2. Expenditures:

This bill does not appear to have a fiscal impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Business and Professional Regulation suggests that a "per home" fee will have to be imposed on homeowners to cover the costs of regulation.⁵

Section 5 of the bill places requirements on condominium associations relating to guest parking. Condominium associations will have to pay the costs to comply with these requirements. The cost, if any, is unknown.

D. FISCAL COMMENTS:

The Department of Business and Professional Regulation provided the following fiscal comments:

The bill imposes regulatory responsibility and mandatory training for homeowners' and condominium associations without providing appropriation or a revenue source. The department would not be able to implement the requirements of this legislation without adequate resources.

There are two areas that will have the greatest fiscal impact.

First, the bill requires mandatory training for condominium and homeowners' association board members. The number of current board members in the state is unknown, but with approximately 18,500 condominium associations and 14,000 homeowners' associations, each with approximately 5 board members, the mandatory training will need to cover approximately 162,500 board members. The current education program provides education to 3,000 to 4,000 condominium unit owners and board members annually, and is funded at a rate of \$100 per attendee, at this rate the mandatory training of condominium and homeowners' association board members is estimated to cost \$16.25 million. With current funding at \$500,000, the net additional cost for the first year will be \$15,750,000. The department has utilized the same contractor for the current condominium education program for the last three years. It is possible the cost could be less than the current rate per board member, however, the training of all board members statewide will be very labor intensive and the estimated cost has been projected using the current rate.

The second consideration is that the bill provides that the Division of Land Sales will enforce the provisions of chapter 720, F.S., related to homeowners' associations and part VIII of chapter 468, Florida Statutes. However, the bill provides no new positions to carry out the required duties, and funding is limited to collection of penalties. In order to carry out the regulatory duties it is estimated that these programs will require 24 new investigative positions, 4 financial examiner/analyst positions, 5 administrative positions and 3 supervisor positions, detailed below. The estimated first year cost for this is \$2,186,230. No growth factor has been assumed for future years.

The total fiscal impact to the department is \$17,944,339 in FY 2005-2006, \$9,679,843 in FY 2006-2007 and \$10,102,968 in FY 2007-2008. The only revenue source the bill provides is from penalties the department may impose. The revenue from civil penalties is estimated to be \$111,083 for Fiscal Years 2005-2006, 2006-2007 and 2007-2008.⁶

The department submitted the following relating to staffing issues raised by this bill:

⁵ Department of Business and Professional Regulation, Legislative Analysis HB 1229, March 21, 2005

⁶ Department of Business and Professional Regulation, Legislative Analysis HB 1229, March 21, 2005

Based upon the additional duties required by this bill and a projection of at least 14,000 homeowner associations, the department estimates that it could receive approximately 1,911 additional compliance cases, roughly the number of condominium/cooperative complaints received during FY 2003/2004. In order to handle the additional workload created by this bill, the department will require additional staff similar to the current makeup of the condominium compliance program: 22 Investigative Specialist II positions, 2 Investigative Specialist I positions, 4 Financial Examiner/Analyst [FEA] II positions, 3 Administrative Assistant I positions, 1 Administrative Assistant II position, 2 Investigation Specialist Supervisor positions and 1 FEA Supervisor in the Division of Land Sales. There will also be a need for more legal support as follows: 2 Senior Attorneys, 1 Staff Attorney, 1 Administrative Assistant II, and 1 OPS law clerk to handle the increase in case load from the anticipated investigations, complaints, declaratory statements, requests for variance and waiver, rulemaking, legal opinions, and disciplinary actions resulting from this legislation and this new regulatory program.

In addition, up to six positions may be necessary in the department's Division of Service Operations. Based on the potential workload of this bill - 2 positions may be needed in the Customer Contact Center and 4 positions necessary in the Central In-Take Unit. The estimated expenditures for the Service Operations have not been included in the cost analysis.

The investigative positions will travel frequently from their respective office locations, each will need typical office setups including desk, chairs, phone, computer, etc. The legal staff will also need full office setups and travel funds to appear at hearings and council meetings on disciplinary cases.⁷

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the Department of Business and Professional Regulation to adopt rules to implement the regulatory authority created by section 11 of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

(1) Section 720.302(2), F.S., provides, in part:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations.

⁷ Department of Business and Professional Regulation, Legislative Analysis HB 1229, March 21, 2005

This bill arguably creates a “bureau or other agency... to regulate the affairs of homeowners’ associations.”

(2) Section 7 of the bill requires the department to notify condominium unit owners found to be in violation of ch. 718 and gives the owners 30 days to respond. The Department of Business and Professional Regulation submitted the following comment regarding section 7:

It is unclear if the intent of this change is to authorize the Division to investigate violations of the statute and rules by individual owners. The Division does not presently investigate violations committed by individual owners except to the extent that the statute allows the Division to personally fine board members and officers of the association who willfully and knowingly violate the statute. If the intent is to authorize the Division to proceed against individual owners, clarifying language should be added, and this analysis must be changed to reflect the significant fiscal impact on the Division. If this is not the intent, the actual intent should be restated. Generally, the Condominium Act regulates the creation, sale, and operation of condominiums by developers and associations, not the conduct of individual unit owners. Unit owner conduct is generally a matter of association action under the governing documents or a matter for condominium arbitration.⁸

(3) Section 12 of the bill creates s. 720.3071, requiring mandatory training of homeowners’ association board members. The language in section 12 is duplicative of language in section 11 of this bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

⁸ Department of Business and Professional Regulation, Legislative Analysis HB 1229, March 21, 2005